



PUBLIC LAW | CONSTRUCTION

Legislation and case law updates

3rd Quarter

LEGISLATIVE NEWS

MINISTERIAL ORDER 265/2025/1 OF 11 JULY, AS CORRECTED BY RECTIFICATION DECLARATION 33/2025/1 OF 17 JULY

This is the third amendment to Ministerial Order 65/2019 of 19 February, which defined the concepts and parameters relating to the area, promotional costs and maximum sale prices applicable to controlled-cost housing.

This amendment adjusts the calculation formula applicable to the cost of developing controlled-cost housing. The formula was no longer in line with reality, given the increase in construction costs, particularly in urban regeneration areas, as well as the increase in the cost of land and infrastructure, as well as the associated costs of new energy requirements for buildings.

DECREE-LAW 110/2025 OF 25 SEPTEMBER

The procedures for forming contracts aimed at developing public housing or controlled-cost housing (a form of affordable housing with regulated prices) were excluded from the scope of Decree-Law 96/2021 of 12 November, which concerns the integration of artworks in public works for public enjoyment. This legislation requires the state, public institutes, and public companies in the state business sector to incorporate artworks into public works contracts or concessions relating to public infrastructure and amenities worth €5 million or more.

COUNCIL OF MINISTERS COMMUNIQUEÉS

COMMUNIQUEÉ OF 18 SEPTEMBER

The Council of Ministers has approved a set of measures aimed at increasing the supply of controlled-cost housing (a form of affordable housing with regulated prices). The following aspects are highlighted:

- **Amendments to the Public Contracts Code**
 - a) The elimination of obstacles to the use of modular construction in public works contracts, namely the requirement for the design-build model to be strictly exceptional and justified
 - b) Increasing the thresholds for direct award and prior consultation for public works contracts and concessions for public or cost-controlled housing
- **Streamlined financing for affordable or public housing**
 - a) Financing contracts to develop, renovate, and acquire properties for affordable or public housing, or for temporary accommodation – including guarantees associated with such financing – are exempt from prior scrutiny by the Audit Court
 - b) Municipalities may take out loans under Portugal’s Plano de Recuperação e Resiliência (Recovery and Resilience Plan) on more favourable terms

COMMUNIQUEÉ OF 25 SEPTEMBER

The Council of Ministers has approved a series of measures aimed at promoting housing supply and access, reducing construction costs and attracting investment in affordable rental properties. The following aspects are highlighted:

- **The application of a reduced VAT rate of 6% until 2029** to the construction of housing for sale at moderate prices (up to €648,000) or for rent at moderate rents (up to €2,300 per month).
- **The creation of ‘Build to Rent’ investment contracts with:**
 - a) 6% VAT on construction
 - b) Full exemption from Municipal Property Transfer Tax (IMT) and Municipal Property Tax (IMI) for the first eight years
 - c) Exemption from capital gains tax for reinvestment in housing for rent at controlled prices
- **Tax benefits for landlords:**
 - a) Personal Income Tax (IRS) at a rate of 10% for landlords who rent their properties on the open market at controlled prices (i.e. up to €2,300)
 - b) Full exemption from Personal Income Tax (IRS) and Corporate Income Tax (IRC) tax for rents that are 20% below the median for the municipality in question
 - c) Exemption from the Municipal Property Tax Surcharge on properties rented for up to €2,300 per month
- Municipal Property Transfer Tax (IMT) will increase in the case of property purchases by non-nationals who are not resident in Portugal.
- An increase in the income tax deduction for rents, initially rising to €900 and subsequently to €1,000.
- **There will be clarification on the rules applicable to temporary accommodation for displaced construction workers:** works required for this type of accommodation are not subject to prior control procedures under the Legal Framework of Urban Development and Construction, as they are considered satellite facilities for the construction project.

CASE LAW

JUDGMENT OF THE COURT OF APPEAL OF COIMBRA OF 8 JULY 2025, CASE NO. 1577/25.3T8VIS-A.C1

Advance production of evidence and recognition of a credit right

Advance production of evidence is a procedural instrument that enables a party to present evidence to the court in order to assert a right, even before legal proceedings have been issued or the trial has begun. However, this instrument can only be used if there is a well-founded fear that if the production of evidence is deferred, it may become impossible or very difficult to produce, implying a prognosis of such impossibility or difficulty.

In this case, the court ruled that early production of evidence was justified before legal action was taken, provided that the contractor (claimant) presented themselves as a creditor of the owner of the work under a construction contract and the owner did not allow the claimant to continue the work. The court held that the future award of completion of the contract to a third party could objectively make it very difficult, or even impossible, to determine the percentage of work performed by the initial contractor and its value.

JUDGMENT OF THE NORTHERN CENTRAL ADMINISTRATIVE COURT OF 5 MAY 2025, CASE NO. 01404/20.8BEBRG

On the start of the limitation period

The contractor has a period of 30 days to submit a request for the restoration of the financial balance of the works contract (see Article 354(2) of the Public Contracts Code). This period runs from the date the contractor becomes aware of the event that causes the imbalance. However, the contractor does not need to know the full extent of the loss at that time.

An extension to the contract performance period granted by the project owner on the basis of circumstances attributable to them constitutes a relevant event for the purposes of triggering the period referred to in Article 354(2) of the Public Contracts Code.

In cases involving ongoing events, damage does not occur immediately and instantaneously, so establishing the start date of the 30-day period can be challenging. In this case, the court held that the 30-day period only begins from when costs are actually allocated, and the simple lifting of a suspension of works – which later led to the project owner extending the deadline for completion – should not be taken as the starting point.

JUDGMENT OF THE SUPREME COURT OF JUSTICE OF 7 SEPTEMBER 2025, CASE NO. 3708/19.3T8FAR.E1.S1

Definitive breach and warning notice

The owner of the work can terminate the contract on the grounds of definitive breach if the contractor abandons the work, leaving it unfinished and unfit for its intended purpose. However, definitive breach only occurs when, after being requested to return to the work within the period stipulated by the owner, the contractor fails to do so (admonitory notice).

As a consequence of the retroactive effect of terminating the contract, the owner has the right to recover the price already paid. Additionally, during this process, the contractor may retrieve any photovoltaic panels supplied under the contract.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 15 SEPTEMBER 2025, CASE NO. 1645/23.6T8VFR.P1

The Civil Code provides for situations in which liability for causing damage to third parties is presumed, particularly when carrying out dangerous activities.

Welding asphalt sheets with a blowtorch using a gas-fuelled flame is considered a dangerous activity for the purposes of Article 493(2) of the Civil Code. This is due to the particular danger and specific risk of causing a fire or even an explosion. If a subcontractor causes a fire while carrying out this activity, they are liable for any damage caused to third parties unless they can prove that they took all necessary measures to prevent it.

When carrying out dangerous activities, the contractor is jointly and severally liable for damage caused to third parties with the subcontractor. This stems from the fact that the contractor is responsible for monitoring the subcontracted work and exercising supervision, technical inspection and control over the subcontractor’s work. ■